

Message Text

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PAGE 01 STATE 080760
ORIGIN DLOS-03

INFO OCT-01 ISO-00 /004 R

66011

DRAFTED BY D/LOS:GEORGE TAFT:AFR

APPROVED BY D/LOS:GEORGE TAFT

-----120458Z 028472 /14

R 112107Z APR 77

FM SECSTATE WASHDC

TO AMEMBASSY BONN

AMEMBASSY CANBERRA

C O N F I D E N T I A L STATE 080760

FOL RPT KUALA LUMPUR 193 ACTION LONDON SECSTATE INFO MOSCOW
PARIS TOKYO JAKARTA SINGAPORE 29 MAR 77 QUOTE

C O N F I D E N T I A L KUALA LUMPUR 1938

LONDON PASS LEITZELL - LOS DELEGATION 9:00 A.M. 19 MARCH

FROM US LOS DEL

E.O. 11652 GDS

TAGS: PLOS

SUBJECT: LOS -- STRAITS

1. AS AGREED AMONG G-5, REQUEST LEITZELL BRIEF OTHER G-5
REPRESENTATIVES (AND FRG IF POSSIBLE) TODAY ON
CONVERSATIONS IN KUALA LUMPUR. AS AGREED IN G-5, US
STRONGLY PRESSED POSITION OF NO RPT NO SUBSTANTIVE
AMENDMENTS TO STRAITS ARTICLES. (JAPANESE IN PARTICULAR
SHOULD BE TOLD WE STOOD FIRM ON THIS UNDER HEAVY PRESSURE.)
PROBLEM WAS ACCOMMODATING MALAYSIAN CONCERNS THAT IT BE
MADE CLEAR THAT STRAITS ARTICLES PERMIT UKC REQUIRMENTS
(ALBTIT WITH IMCO APPROVAL), THAT IMPOSITION OF
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REQUIRMENTS IS NOT RPT NOT DEPENDENT ON IMCO
MEMBERSHIP OR POWERS UNDER OTHER TREATIES, AND THAT
REQUIRMENTS CAN BE ENFORCED (E.G., WHAT
HAPPENS IF VESSEL EXCEEDING UKC LIMIT TRIES
TO TRAVERSE STRAIT?).

2. DISCUSSIONS LED TO TWO IDEAS THAT WE AND

GOM WILL DISCUSS WITH OTHER STRAITS AND MARITIME STATES TO ELICIT REACTIONS. GOM CLEARLY UNDERSTOOD WE WOULD HAVE TO CONSULT WITH OTHER MARITIME COUNTRIES ON THESE IDEAS. FIRST IS INTERPRETIVE STATEMENT (PARA 3 BELOW) WHICH WOULD OBTAIN NEED FOR AMENDING STRAITS ARTICLES ON SUBSTANCE OF UKC PROBLEM. SECOND IS AMENDMENT TO ARTICLE 42 OF PART III (POLLUTION) (PARA 4 BELOW) WHICH WOULD SIMULTANEOUSLY AVOID REOPENING STRAITS ARTICLES, CLARIFY ENFORCEMENT POINT WHILE GIVING SHIPPING PROTECTION OF THE SAFEGUARDS, AND GIVE US A MORE LOGICAL LINE OF DEFENSE AGAINST EXTREMIST PROPOSALS TO DELETE THE ARTICLE. AS MINISTER KADIR WILL VISIT MOSCOW IN MID-APRIL, LEITZELL SHOULD URGE SOVIETS NOT RPT NOT TO AGREE TO ANY AMENDMENT TO STRAITS ARTICLES EXCEPT FOR CLARIFICATION ON SCIENTIFIC RESEARCH ALONG LINES ARTICLE 127. THERE IS GREAT RISK IN OUR VIEW IN ANY ARTICLE 40A (UKC) BECAUSE IT REOPENS STRAITS ARTICLES IN PRINCIPLE. THE SCIENCE POINT CAN BE HANDLED QUIETLY BY AGUILAR AS A TECHNICAL CLARIFICATION. GOM SEEMS PREPARED TO DROP OTHER AMENDMENTS IF UKC PROBLEM IS SOLVED.

3. BEGIN TEXT. PRELIMINARY DRAFT. INTERPRETIVE STATEMENT. (PARTICIPATION OF OTHER APPROPRIATE STRAITS AND MARITIME STATES WOULD BE SOUGHT IN A PUBLIC STATEMENT INTERPRETING THE CONFIDENTIAL

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RELEVANT PROVISIONS OF THE LAW OF THE SEA TREATY.)

1. THE DESIGNATION OF TRAFFIC SEPARATION SCHEMES BY STATES BORDERING STRAITS PURSUANT TO ARTICLE 39 MAY INCLUDE RELATED MATTERS RELEVANT TO THE PECULIAR GEOGRAPHIC AND TRAFFIC CONDITIONS IN THE STRAITS. THUS, A TRAFFIC SEPARATION SCHEME IN THE STRAITS OF MALACCA SUBMITTED TO THE COMPETENT INTERNATIONAL ORGANIZATION UNDER PARAGRAPH 4 OF ARTICLE 39 MAY INCLUDE REASONABLE UNDER KEEL CLEARANCE REQUIREMENTS. READ IN THE CONTEXT OF ARTICLE 39 AND ARTICLE 40(1), PARAGRAPH 2 OF ARTICLE 40 DOES NOT PRECLUDE THE APPLICATION OF SUCH UNDER KEEL CLEARANCE REQUIREMENTS.

2. THE OBLIGATION UNDER ARTICLE 39, PARAGRAPH 7, AS WELL AS THE RIGHT OF STATES BORDERING STRAITS UNDER ARTICLE 40(1) (A) TO MAKE LAWS AND REGULATIONS IMPLEMENTING TRAFFIC

SEPARATION SCHEMES (INCLUDING ANY UNDER KEEL CLEARANCE REQUIREMENTS) PRESCRIBED IN ACCORDANCE WITH ARTICLE 39, ARE NOT DEPENDENT UPON THE TERMS OF, OR PARTICIPATION IN, ANY OTHER INTERNATIONAL AGREEMENT (INCLUDING THE CONSTITUTENT INSTRUMENT OF THE COMPETENT INTERNATIONAL ORGANIZATION). THE AUTHORITY TO PRESCRIBE SCHEMES BINDING ON ALL SHIPS DERIVES FROM THE PROCEDURES AND CRITERIA SPECIFIED IN THIS TREATY.

3. NEITHER PARAGRAPH 2 OF ARTICLE 40, NOR ANY OTHER PROVISION OF THE STRAITS CHAPTER, AUTHORIZES PASSAGE OF A VESSEL IN CONTRAVENTION OF THE PROVISIONS OF THAT CHAPTER AND LAW AND REGULATIONS MADE PURSUANT THERETO. END TEXT.

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4. BEGIN TEXT. ADD TO PART III, ART. 42:
..., PROVIDED HOWEVER THAT THE PROVISIONS OF SECTION VIII OF THIS CHAPTER SHALL BE RESPECTED MUTATIS MUTANDIS IN THE ENFORCEMENT BY STATES BORDERING STRAITS OF THE LAWS AND REGULATIONS REFERRED TO IN ARTICLE 40 OF PART II OF THIS CONVENTION WITH RESPECT TO FOREIGN SHIPS OTHER THAN THOSE REFERRED TO IN PARAGRAPH 5 OF THAT ARTICLE.

5. PLEASE CONFIRM AND REPORT REACTIONS TO DEPT AND USDEL (SINGAPORE AND JAKARTA), INCLUDING ANY SOVIET INFORMATION ON MOCHTAR VISIT ON STRAITS, ARCHIPELOGUES, OR OTHER MATTERS.

6. YOU SHOULD BE AWARE THAT GOM RECOGNIZES THAT IT IS IN NO ONE'S INTEREST TO STOP A LARGE TANKER IN A NARROW AND DANGEROUS PASSAGE AREA, AND PINTS OUT THAT RISK TO STRAITS STATE COULD BE EVEN GREATER THAN TO SHIPPING STATE. THEY WANT A LEGAL LEVER TO ENCOURAGE VESSEL EXCEEDING UKC TO WAIT (E.G., FOR TIDE CHANGE) OR TURN AROUND BEFORE IT GETS INTO THAT SITUATION. IN THIS REGARD, THEIR REACTION TO ENFORCEMENT SYSTEM IN SECTION VIII OF PART III WAS FAVORABLE.

7. AT REQUEST OF MINISTER KADIR, WE HANDED HIM CONFIDENTIALLY THE FOLLOWING INFORMAL NOTES ON PACKAGE BEGIN TEXT. NOTES ON PACKAGE ARRANGEMENT REGARDING MALACCA STRAITS RESULTING FROM US-MALAYSIAN TALKS

MARCH 28-29, 1977.

1. TECHNICAL ASSISTANCE OF U.S. EXPERTS
TO STRAITS STATES IN PREPARING DRAFT TRAFFIC
SEPARATION SCHEME, INCLUDING UNDER KEEL CLEARANCE
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REQUIREMENTS, FOR SUBMISSION TO IMCO. ADVANCE
CONSULTATIONS AMONG STATES PRINCIPALLY CONCERNED
TO ENSURE FAVORABLE RECEPTION IN IMCO. U.S.
POLITICAL SUPPORT FOR ADOPTION OF AGREED REGULATIONS
IN IMCO.

2. UKC REQUIREMENT WOULD BE 3.5 METERS,
WITH REASONABLE TRANSITION PERIOD
SATISFACTORY TO STATES PRIMARILY CONCERNED.

3. VOLUNTARY RESPECT FOR REGULATIONS UPON
SUBMISSION FOR IMCO CONSIDERATION. THIS
COULD INCLUDE REASONABLE VOLUNTARY UKC LIMITATION
DURING TRANSITION PERIOD.

4. PUBLIC, ON-THE-RECORD INTERPRETIVE
STATEMENT TO BE MADE BY APPROPRIATE STRAITS AND
MARITIME STATES CLARIFYING THE APPLICABILITY OF
UKC REQUIREMENTS PURSUANT TO PART II,
ARTICLES 39 AND 40, OF THE RSNT(33 3&. ATTACHED
PRELIMINARY DRAFT STATEMENT), IN THE CONTEXT OF
THEIR SUPPORT FOR STRAITS ARTICLES AS DRAFTED.

5. AMENDMENT TO PART III, ARTICLE 42, RSNT
CLARIFYING ENFORCEMENT RIGHTS OF STATES BORDERING
STRAITS (SEE EG. ATTACHED DRAFT AMENDMENT).

6. WITH RESPECT TO SCIENTIFIC RESEARCH,
PRIVATE SUGGESTION BY APPROPRIATE MARITIME AND
STRAITS STATES TO CHAIRMAN OF COMMITTEE II THAT
IT IS DESIRABLE FOR TECHNICAL REASONS OF CONSISTENCY
TO INCLUDE LANGUAGE IN STRAITS CHAPTER ALONG
LINES OF PART II, ARTICLE 127, OF THE RSNT. THIS
CAN BE DONE WITHOUT FORMATION OF NEGOTIATING
GROUP ON STRAITS OR OTHER FORMAL ACTION.

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7. PARTICIPATION WITH OTHER STATES IN

PREPARATION OF INTERPRETIVE STATEMENT REGARDING
THE TERM "GENERALLY ACCEPTED INTERNATIONAL
STANDARDS" AND ANALOGOUS TERMS IN OTHER PARTS OF
THE CONVENTION TO CLARIFY THAT THE CONCEPT IS A
DYNAMIC ONE THAT CONTINUOUSLY INCORPORATES THE
MOST MODERN STANDARDS, AND THAT IN THIS REGARD ONE
WOULD, FOR EXAMPLE, LOOK AT PRESENT TO THE NEW AND
MORE STRINGENT STANDARDS OF THE 1973 LONDON
MARINE POLLUTION CONVENTION. END TEXT.
UNDERHILL

UNQUOTE VANCE

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01-Jan-1994 12:00:00 am
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: LAW OF THE SEA, AGREEMENTS, MEETINGS, BRIEFING MATERIALS, STRAITS
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Copy: SINGLE
Sent Date: 11-Apr-1977 12:00:00 am
Decaption Date: 01-Jan-1960 12:00:00 am
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 22 May 2009
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1977STATE080760
Document Source: CORE
Document Unique ID: 00
Drafter: GEORGE TAFT:AFR
Enclosure: n/a
Executive Order: GS
Errors: N/A
Expiration:
Film Number: D770125-1269
Format: TEL
From: STATE
Handling Restrictions: n/a
Image Path:
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Legacy Key: link1977/newtext/t19770469/aaaachss.tel
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Litigation History:
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Message ID: dab02fa7-c288-dd11-92da-001cc4696bcc
Office: ORIGIN DLOS
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 5
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: n/a
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 16-Nov-2004 12:00:00 am
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 2840186
Secure: OPEN
Status: NATIVE
Subject: LOS -- STRAITS
TAGS: PLOS, US, MY
To: BONN CANBERRA
Type: TE
vdkgvwkey: odb://SAS/SAS.dbo.SAS_Docs/dab02fa7-c288-dd11-92da-001cc4696bcc
Review Markings:
Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
22 May 2009
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009